

**VOLUNTARY CLEANUP CONTRACT  
06-5687-NRP**

**IN THE MATTER OF  
TOXAWAY MILL, ANDERSON COUNTY  
and  
ANDERSON COUNTY**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Anderson County, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2005), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C §§ 9601, et seq., and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200 (2002), with respect to the property located at 204 Gossett Street, Anderson, South Carolina. Toxaway Mill (the property) includes approximately 13.67 acres and is identified by Anderson County Tax Map Numbers 150-09-02-001, 149-12-07-008 through 149-12-07-013, and 149-12-04-007 through 149-12-04-009. The property is bounded generally by, Minor Street and railroad tracks to the south, South Gossett Street to the west, East Whitner Street and residential lots to the north, and railroad tracks and undeveloped property to the east. In entering this Contract, the Department relies on the representations of the "Information and Certification" submitted November 6, 2006 and addendum submitted via facsimile on December 11, 2006 by Anderson County. The Information and Certification is incorporated into this Contract and attached as Appendix A. Appendix A also includes a plat map of the property.

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them in CERCLA, including any amendments, or in the regulations promulgated thereunder.
  - A. "ANDCO" shall mean Anderson County.
  - B. "Bona Fide Prospective Purchaser" shall have the same meaning as that in CERCLA, Section 222.

- C. "Contract" shall mean this Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Existing Contamination" shall mean any hazardous substances, pollutants or contaminants (as defined herein), present or existing on or under the Site as of the execution date of this Contract.
- F. "Hazardous Substance" means
  - a. Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1321(b)(2)(A)],
  - b. Any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title,
  - c. Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress),
  - d. Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. 1317(a)],
  - e. Any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and,
  - f. Any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph,

and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

- G. “Non-Responsible Party” (or “NRP”) shall mean any party which is neither:
- a. A responsible party at the time the voluntary cleanup contract is signed, including lenders, economic development agencies, fiduciaries, trustees, executors, administrators, custodians, subsequent holders of a security interest; nor
  - b. A parent, subsidiary of, or successor to a responsible party.
- H. “Oversight Costs” shall mean those costs, both direct and indirect, incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract and any future amendments thereto.
- I. “Pollutant or Contaminant” includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; “contaminant” does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA, Section 101, 42 U.S.C. Section 9601, et seq. and does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.
- J. “Property” shall mean property as described in the Information and Certification attached as Appendix A, and that is subject to ownership, prospective ownership, or possessory or contractual interest of Anderson

County.

- K. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- L. "Responsible Party" shall mean:
  - a. The owner and operator of a vessel, as defined in CERCLA Section 101 (28), or a facility;
  - b. Any person who, at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;
  - c. Any person who, by contract, settlement, or otherwise, arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by such a party or entity and containing such hazardous substances; and/or
  - d. Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, as defined in CERCLA Section 101 (38), or sites selected by such person from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.
- M. "The Site" shall mean all areas where a contaminant has been released, deposited, stored, disposed of, placed, or otherwise comes to be located; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA Section 101 (28).
- N. "Voluntary Cleanup" shall mean a response action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710, et seq. (2002 and Supp. 2005).
- O. "Work Plan" shall mean the plan for additional response actions to be

conducted at the Property as described in Paragraph 5 of this Contract.

2. Based on the information known by and/or provided to the Department, the following findings are asserted for purposes of this Contract:

A. Owners and operators on the property are as follows:

Gossett Mills of South Carolina	to 7/31/46
Gossett Mills Inc. of Delaware	7/31/46 to 10/11/46
Textron Southern	9/26/46 to 12/10/53
Textron American, Inc.	12/10/52 to 2/24/55
Textron American, Inc.	2/24/55 to 1/10/56
Toxaway Mills	1/10/56 to 8/29/70
Abney Mills	8/29/70 to 2/26/82
Richard McClellion and Jerry Meehan	2/17/82 to 2/26/82
Charles Hill	2/26/82 to 4/10/91
Norman D. Cohen	4/10/91 to 12/11/97
B + B Investments	12/11/97 to present

B. From the mid 1900's until approximately 1982, the property was the location of a textile mill. Mill buildings formerly present on the property included a yarn dye plant and a finishing plant. Former buildings present on the property also include a warehouse and several vacant or abandoned mill residential lots. The mill was vacated after 1982 and then burned in June 2000. Some salvage operations were conducted by the current owner, but piles of building debris remain on the property. The Phase I Environmental Assessment, prepared by Cushman Enterprises, LLC and dated October 11, 2006, indicates that the building debris may contain lead based paint and asbestos containing materials based on the age and content of the building debris (which includes insulation material, roofing shingles floor tiles

and painted steel, brick and masonry materials). In addition to building debris, the Phase I Environmental Assessment identifies the presence of opened and empty five (5) gallon buckets that formerly contained motor oil, hydraulic fluid and lacquer thinner. An open pit, measuring 2 feet by 26 feet and approximately 2 feet deep, was observed to be filled with an oily liquid (possibly used oil). It appears that the pit overflows during rain events. The specific content and source of the liquid in the pit was not determined, though the empty 5-gallon buckets observed on site may have been emptied into the pit.

- C. In December 2006, after preparation of the Phase 1 Report, ANDCO discovered and reported to the Department that the property owner had transferred an estimated forty (40) truckloads of waste textiles, building debris and other material from an adjacent property to the subject property.
  - D. Anderson County plans to purchase the property to facilitate its redevelopment for light industrial and/or commercial use.
3. ANDCO is a South Carolina county government with its principal place of business located at 101 South Main Street, Anderson, SC, 29621. ANDCO is a Non-Responsible Party at the Site; it is not a parent, successor, or subsidiary of a Responsible Party at the Site; and it certifies that it is eligible to be a Bona Fide Prospective Purchaser for the Property. ANDCO has had no previous involvement with the Site, including but not limited to any such activities that may have resulted in any Existing Contamination at the Site.
4. ANDCO agrees to submit to the Department for review and written approval within thirty (30) days of the execution date of this Contract a Work Plan for the Property that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The

Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and ANDCO's contact person for matters relating to this Contract. ANDCO will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify ANDCO in writing of any deficiencies in the Work Plan, and ANDCO shall respond in writing within thirty (30) days to the Department's comments. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

A. Remove existing hazardous substances

- a. Prior to conducting soil and groundwater site assessment activities, ANDCO shall characterize and remove all debris and waste materials from the Property for proper disposal in accordance with applicable regulations including disposal in accordance with EPA's Offsite Rule. Items that shall be managed in this manner include, but may not be limited to:
  - i. All drums, tanks, and other containers
  - ii. Oily liquid material present in on-site pit
  - iii. All building debris
  - iv. Textile waste and other material disposed on property in December 2006.
- b. A Report that includes records documenting characterization results, a site map showing former location of removed items, and disposal records of these items shall be provided to the Department within thirty (30) days after removal activities.
- c. Should any release of hazardous substances occur or be identified during removal of these items, ANDCO shall immediately notify the Department and shall assess the impact of the release in accordance

with a Department approved plan.

- d. Should any evidence of a release of hazardous substances from beneath any building slabs left on the property be discovered at any phase of redevelopment of the Property, ANDCO shall immediately notify the Department and shall conduct additional assessment in accordance with a Department approved plan.

B. Soil Assessment

- a. ANDCO shall assess surface soil (0-2 feet below ground surface) and subsurface soil (greater than two feet below ground surface) to characterize the nature and extent of any release of hazardous substances to soil on the Property. Soil samples shall be collected from potential contaminant source areas, including any identified during characterization and removal of potential sources of hazardous substances as required above to determine the presence/absence of a release. All of the samples shall be analyzed for EPA Target Compound List (TCL) volatile organic compounds, semi-volatile organic compounds, and polychlorinated biphenyls and EPA Target Analyte List (TAL) parameters. Specific soil sample locations shall be proposed in the Work Plan. Soil samples shall be proposed at appropriate depths to detect contaminant releases in the immediate vicinity of potential contaminant sources including:

- i. Oil Pit: After characterization, removal and proper disposal of material in the pit, ANDCO shall collect four soil samples from the base of the pit. Soil samples shall be analyzed for constituents identified during characterization of material in the pit and shall at a minimum include EPA TCL volatile organic compounds and semi-volatile organic compounds.
- ii. Areas of significant soil staining: Surface and subsurface

soil samples shall be collected from any areas with significant staining. Locations and number of samples shall be determined based on a site visit conducted after removal of debris from the property and prior to preparation of the work plan. All of the samples shall be analyzed for EPA Target Compound List (TCL) volatile organic compounds, semi-volatile organic compounds, and polychlorinated biphenyls and EPA Target Analyte List (TAL) parameters.

iii. Grid sampling: Surface and subsurface soil samples shall be collected from approximately twelve (12) locations across the property. Surface samples shall be analyzed for EPA Target Compound List (TCL) semi-volatile organic compounds and polychlorinated biphenyls and EPA Target Analyte List (TAL) parameters. Subsurface samples shall be analyzed for EPA Target Compound List (TCL) volatile organic compounds, semi-volatile organic compounds, and polychlorinated biphenyls, and EPA Target Analyte List (TAL) parameters. Samples from two locations shall be analyzed for all parameters on the TAL/TCL.

- b. Based on the results of initial assessment, additional assessment may be required to determine the extent of contamination.
- c. Soil quality results shall be compared to EPA Region IX Preliminary Remediation Goals (PRGs) for residential and industrial exposure and to EPA Region IX Soil Screening Levels for Contaminant Migration to Groundwater (SSLs) with a dilution/attenuation factor (DAF) of 20, which is appropriate

for the property. Alternatively, a site specific DAF may be determined based on site-specific criteria in accordance with EPA Soil Screening Guidance, <http://www.epa.gov/superfund/resources/soil/index.htm>.

C. Groundwater Assessment

- a. ANDCO shall assess groundwater quality and flow direction across the Property to determine the lateral and vertical extent of any hazardous substances present in groundwater on the Property. Assessment shall include installation and sampling of approximately four (4) monitoring wells. ANDCO may utilize monitoring well MW-2, located on the adjacent (and downgradient) Gossett Street site (provided the monitoring well condition is suitable for use) for assessment of groundwater quality and flow direction. The Work Plan shall propose specific locations and construction details of monitoring wells designed to detect any release of hazardous substances based on site history and present conditions regarding potential contaminant sources. Analytical parameters for all monitoring wells shall include volatile organic compounds, semi-volatile organic compounds and TAL metals.
- b. Groundwater quality results shall be compared to standards set forth in the South Carolina State Primary Drinking Water Regulations, R.61-58 or if not specified in R.61-58, to the EPA Region IX Preliminary Remediation Goals for Tap Water.

D. Corrective Measures

Should the results of assessment activities indicate that hazardous substances exist in soil on the Property in excess of risk-based standards for

residential use and/or in excess of appropriate standards for contaminant migration to groundwater, ANDCO agrees to take reasonable steps, approved by the Department, to address the soil contamination in a manner that is protective of human health and the environment and appropriate for the intended future use of the property.

E. Groundwater monitoring and/or abandonment of permanent groundwater monitoring wells

- a. Based on the results of groundwater assessment, implementation of a Department-approved groundwater monitoring program may be required.
  - b. If groundwater monitoring is not required and there are no further needs for any groundwater monitoring wells on the property, ANDCO shall abandon the monitoring well(s) in accordance with R.61-71 of the South Carolina Well Standards and Regulations, dated April 26, 2002.
5. ANDCO shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan that is consistent with Occupational Safety and Health Administration regulations. The ANDCO agrees that the Health and Safety plan is submitted for informational purposes only to the Department and any liability that may result from implementation of the Health and Safety Plan shall rest solely with ANDCO.
  6. ANDCO shall inform the Department at least five (5) working days in advance of all field activities pursuant to this Contract and shall allow the Department and its authorized representatives, if so desired, to take duplicates of any samples collected by ANDCO pursuant to this Contract.
  7. ANDCO shall preserve all drums, bottles, labels, business and operating records,

contracts, Site studies, investigations, and other physical or written materials relating to the Site that may provide environmental information, evidence of a Potentially Responsible Party's involvement at the Site, or may lead to the discovery of other areas of contamination at the Site. Prior to destruction of any such items, ANDCO shall notify the Department of their location and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense.

8. Within thirty (30) days of the execution date of this Contract and quarterly thereafter, ANDCO shall submit to the Department's project manager a written progress report that must include the following: (a) actions taken under this Contract during the previous reporting period; (b) actions scheduled to be taken in the next reporting period; (c) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (d) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
9. All correspondence which may be required or permitted to be given by either party to the other hereunder shall be in writing and deemed sufficiently given if delivered by (i) regular U.S. mail, (ii) certified or registered mail, postage prepaid, return receipt requested, (iii) or nationally recognized overnight delivery service company or by hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing. All correspondence, work plans, and reports (including four (4) copies of all work plans and reports, except one (1) copy of the Health and Safety Plan) should be submitted to:

Angela Gorman

SCDHEC Bureau of Land and Waste Management

2600 Bull Street  
Columbia, South Carolina 29201

Jeff Ricketson, Planning Division Director  
Anderson County  
101 South Main Street  
Anderson, South Carolina 29621

10. The Department and ANDCO recognize that public participation is an important component of the Voluntary Cleanup Contract. Specific functions of the Department and ANDCO are as follows:
  - a. The Department will seek public comment in accordance with S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005) as outlined below:
    - i. Upon signature of this Contract by ANDCO, the Department will provide notice for public participation by placing announcements describing the proposed Contract in newspaper(s) of general circulation within the affected community. A thirty-day period following the publication date of the announcement(s) will be provided for public comment and will precede the Department's scheduled date for execution of the Contract.
    - ii. The Department may publicize the proposed Contract by any other means including, but not limited to, electronic mail, news releases, community flyers, and door-to-door canvassing. Such actions may be done solely at the Department's discretion.
    - iii. A public informational meeting will be held if requested by twelve residents of South Carolina or an organization representing twelve or more residents of South Carolina. At the Department's discretion, public informational meetings may be held in the

nearby communities for any other reason prior to the Department executing the contract. A public meeting may be requested at any time during the thirty-day comment period. In the event that a public meeting is deemed necessary, the Department will provide approximately two weeks advance notice of the meeting to the public and will extend the public comment period at least through the end of the day following the public meeting. The Department will not execute the contract during any public comment period. In addition, the Department may, at its discretion, conduct public meetings to inform the community about the site at any time after the contract is executed until the certificate of completion is issued.

- b. ANDCO agrees to enhance the public knowledge of the site response activities by:
  - i. Erecting a sign(s) at each entrance onto the reference property from any public road, thoroughfare, navigable waterway, or other location routinely accessible by the public. The sign(s) shall be erected not later than one day after publication of any public announcement about the site placed by the Department in any newspaper of general circulation in the community.
  - ii. The sign will state “Voluntary Cleanup Project by ANDCO under Voluntary Cleanup Contract (VCC number) with the South Carolina Department of Health and Environmental Control.” The sign shall provide a brief description of the scope of activities under the NRP contract and contact information for a representative of ANDCO and the Department. Contact information for the Department shall state “TOLL-FREE TELEPHONE: 1-866-576-3432”. All required lettering on the sign must be of sufficient size to be legible with un-aided normal

eyesight from the point where the public will normally pass by the site without intruding onto the subject property.

- iii. Within 10 days after erecting the sign, ANDCO shall furnish to the Department photographs of the sign along with a site location drawing showing the sign location(s). Photograph(s) of the sign(s) shall be taken from no closer than the edge of the publicly-accessible road, waterway, etc. and should include an appropriately sized scale reference so that Department may determine the size of the sign and effectiveness of the lettering. ANDCO agrees to revise the sign if the Department determines the sign is not legible.
  - iv. ANDCO must maintain the sign(s) in legible conditions and visible locations throughout the duration of the contract period until a certificate of completion is issued on the site.
  - v. In the event that any sign must be removed to accommodate building or grading activities, ANDCO shall replace the sign within two days. If the sign cannot be restored to the original location, ANDCO may relocate it to another location meeting the conditions specified above.
- c. All costs incurred by the Department for public participation [e.g., public notice(s), building and equipment rental(s) for public meetings, etc.] will be paid by ANDCO.

11. The terms and conditions of this Contract apply to and shall inure to the benefit of each signatory and its Non-Responsible Party lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries but only to the extent that such parties have never been a Responsible Party at the Site and the Department. The Department shall be notified in writing upon transfer of ownership of the property.

12. Nothing in this Contract is intended to be, or shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation not a signatory of this Contract or a signatory's NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries
13. Nothing in this Contract is intended to limit the right of the Department to undertake future response actions at the Site or to seek to compel parties other than ANDCO and its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law
14. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). ANDCO and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee successor or other transferee of the Property
15. The Department, its authorized officers, employees, representatives, and all other persons performing response actions will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). ANDCO and subsequent owners of the Property shall ensure that a copy of this Contract is

provided to any lessee successor or other transferee of the Property

16. As provided for by S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (D) (2002), ANDCO shall, on a quarterly basis, reimburse the Department for oversight costs of activities required under this Contract. Oversight costs include but are not limited to the direct and indirect costs of negotiating the terms of this Contract, reviewing Work Plans and reports, supervising corresponding work, and public participation. Payments will be due within thirty (30) days of receipt of the Department's invoice. Invoices shall be submitted to:

Jeff Ricketson, Planning Division Director  
Anderson County  
101 South Main Street  
Anderson, South Carolina 29621

17. The Department and ANDCO agree that the following are entitled to protection from contribution claims as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005): ANDCO, its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. A thirty (30) day comment period for contribution protection commences upon notice of this Contract to Responsible Parties at the Site as identified by the Department through a reasonable search effort.
18. The Department and ANDCO agree that the following are entitled to protection from third-party claims for equitable relief or damages relating to "Existing Contamination" at the Site, as provided by S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005): ANDCO, its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. This limitation on liability does not apply to any contamination, releases, and consequences caused by ANDCO or its

NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. Furthermore, this limitation of liability is effective on the date this contract is executed by the Department, but will be automatically withdrawn if this contract is lawfully terminated by either party.

19. If hazardous substances in excess of residential standards exist at the Property after ANDCO has completed the actions required under this Contract, ANDCO shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of ANDCO and witnessed, signed, and sealed by a notary public. ANDCO shall file this restrictive covenant with the Register of Deeds in Anderson County. The signed covenant shall be incorporated into this contract as an Appendix. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require ANDCO or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. ANDCO or subsequent owners of the Property shall file an annual report with the Department by May 31<sup>st</sup> of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report may be submitted in a manner prescribed by the Department.
20. Two (2) years after the execution date of this Contract, ANDCO or subsequent owner of the Property shall provide the Department with the following information concerning the new operation at the Property: the number of jobs created; the amount of increase to the tax base; the amount of soil removed or remediated, if necessary; cost of all environmental work; and any other information that

demonstrates that the activities performed pursuant to this Contract have been beneficial to the State, the community, and the Department.

21. Upon successful completion of the terms of this Contract as referenced in Paragraphs 4, 5, and 19 above, ANDCO shall submit to the Department a written notice of completion. As part of this notice, ANDCO shall report the costs of all environmental work and the total amount invested in the site for property acquisition and capital improvements. Once the Department determines satisfactory completion of the Contract terms, the Department, as provided by CERCLA § 113(f)(2), 42 U.S.C. §§ 9613(f)(2); S.C. Code Ann. § 44-56-200 (2002) and S.C. Code Ann. § 44-56-750 (2002 and Supp. 2005), will give ANDCO a Certificate of Completion that provides a covenant not to sue ANDCO, its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries for Existing Contamination, except for releases and consequences caused by ANDCO or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries. In consideration of the protections from the Department, ANDCO and its lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.
22. ANDCO specifically denies any responsibility for response costs or damages resulting from Existing Contamination and does not, by signing this Contract, waive any rights that it may have to assert any claims in law or equity against any other person, company, or entity with respect to the Site. However, ANDCO and its lenders, parents, subsidiaries, and successors, including new purchasers, lessees,

heirs, and beneficiaries are responsible and liable for any and all contamination, releases, and consequences they cause or contribute to the Site. Should environmental contamination neither previously-identified nor identified during the performance of response actions required under this Contract be discovered at the Site after the execution date of the Certificate of Completion, the burden is on ANDCO or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries to demonstrate to the Department's satisfaction that the contamination, releases, and consequences were not caused by ANDCO or its NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.

23. ANDCO or subsequent owners of the Property and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should ANDCO or subsequent owners of the Property elect to terminate, it must submit to the Department all data generated pursuant to this Contract, and certify to the Department's satisfaction that any environmental or physical hazard created by ANDCO shall be stabilized and/or mitigated such that the Property does not pose a hazard to human health or the environment that did not exist prior to any initial response action addressing contamination identified in this Contract.
24. The Department may terminate this Contract only for cause, which may include but is not limited to the following: (a) events or circumstances at the Property that are inconsistent with the terms and conditions of this Contract; (b) failure to complete the terms of this Contract or the Work Plan; (c) failure to submit timely payment for oversight costs as defined in Paragraph 16 above, (d) additional contamination or releases or consequences caused by ANDCO or its lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries; (e)

providing the Department with false or incomplete information or knowing failure to disclose material information; or (f) change in ANDCO's, its lenders', parents', subsidiaries', and successors', including new purchasers', lessees', heirs', and beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract.

25. Upon termination of the Contract, the covenant not to sue, contribution protection, and liability protection will be null and void. However, if the lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries provide false or incomplete information or if its business activities change such that they are inconsistent with the terms and conditions of this Contract, then the covenant not to sue, contribution protection, and liability protection shall become null and void only as to the lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries involved in the action giving rise to the termination without affecting the protections provided by this Contract to the previous Non-Responsible Parties and other NRP lenders, parents, subsidiaries, and successors, including new purchasers, lessees, heirs, and beneficiaries.
26. The signatories below hereby represent that they are authorized to and do enter into this contract on behalf of their respective parties.

[Remainder of Page Left Blank Intentionally]

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL CONTROL**

BY: \_\_\_\_\_  
Robert W. King, Jr., P.E.  
Deputy Commissioner  
Environmental Quality Control

DATE: \_\_\_\_\_  
Columbia, South Carolina

\_\_\_\_\_  
Patrick T. (Pat) Walker, Chief  
Bureau of Land and Waste Management

DATE: \_\_\_\_\_

\_\_\_\_\_  
Approved by Legal Office

DATE: \_\_\_\_\_

**ANDERSON COUNTY**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

# APPENDIX A